IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JOHDPUR
::::

Kanhaiyalal
vs
The Addl. District & Sesions Judge, Fast Track No.3, Bikaner & Anr.

S.B.CIVIL WRIT PETITION NO.5765/2007
UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

Date of order : 15.11.2007.

PRESENT
HON'BLE MR. PRAKASH TATIA, J.

Ms.Bita Sipani, for the petitioners.
Mr.Manoj Bhandari, for the respondents.

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BY THE COURT: -

Heard learned counsel for the parties.

The petitioner-plaintiff is aggrieved against the order of the trial court dated 31st July, 2007 by which the trial court by deciding issue no.13 held that the document in question requires registration and since the document has not been got registered, therefore, is not admissible in evidence. Hence, the order of the trial court dated 31st July, 2007 has been challenged by the petitioner-plaintiff by preferring this writ petition.

According to learned counsel for the petitioner,the trial court mis-read the document inasmuch as by this document, the defendant admitted

the share of the plaintiff in the house in dispute. In this document, there is clear mention that the plaintiff shall have right to get the half of the house by registered sale deed and in case, the defendant will not execute the sale deed, the plaintiff will have right to get the sale deed executed through court of law. It is also submitted that by this document amicable arrangement was made for occupation of the house. However, it gives certain portions to the parties to the agreement but on the top of the document itself, it is clearly mentioned that this will be the agreement for partition. In view of the above reason, the document requires no registration and the trial court wrongly disallowed the admission of the document in evidence.

Learned counsel for the respondent vehemently submitted that by the document in question the plaintiff is claiming the title in the property to the extent of half of the property. It is submitted that in such circumstances, the plaintiff wants to produce the document for establishing his right in immovable property and this is the main purpose of the document. It is submitted that even for collateral purposes, the document could not have been admitted in view of the judgment of this Court delivered in the case of Rukmani Devi & Anr. Vs. Nand Kishore through its legal representative & Ors

reported in 2006(1) RLW 340 in which the Division Bench of this Court held that family arrangement if reduced in writing then the said family arrangement also requires registration. Learned counsel for the respondent also relied upon the judgment of the Hon'ble Apex Court delivered in the case of M/s. Bajaj Auto Ltd. Vs. Behari Lal Kohli reported in AIR 1989 SC 1806 wherein the Hon'ble Apex Court held that the question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for non-registration, all its terms are inadmissible including the one with landlord's permission to his tenant to sub-let. In view of the above, learned counsel for the respondent submitted that in this deed Annex.2 there is clear mention of division of property in question and therefore, none of the part of the document can be separated from other parts of the document for the purpose of making the document admissible for proving the part of the contents of the document. The Hon'ble Supreme Court in the case delivered in Hirday Narain Choudhary Vs. Shyam Kihsore Singh & Ors reported in AIR 2002 SC 2526 held that the contents of the document have to be looked into to see whether by the

document the transfer of shares of the parties is effected or the document is only a memorandum of previous partition which is now reduced to be looked into for want of registration.

I considered the submissions of learned counsel for the parties and perused the reasons given by the trial court and the document Annex.2.

It is settled law that the language used in a deed if is unambiguous then its plain and literal meaning is required to be given to the deed. For the purpose of construing the document, no party can add or supplement anything in the language of the document in any manner and even by pleading. When document is not clear by its language then the intention of the parties can be looked into from the surrounding circumstances and may be considered for construing the real nature of the document. It is also settled law that title of the document itself is not decisive and the contents as a whole are required to be read to find out the nature of the document. In this document Annex.2 one of the party, defendant admitted that the house in question was purchased by him in his own name but it was renewed with the aid of money of the plaintiff and plaintiff and defendant's mother. In this document, the defendant's admission is there that in view of the above fact, there is equal share of the parties to

the extent mentioned in the document. In this document there is admission that all the parties to the document are residing in the house in dispute. There is mention that it is wish of the mother that the property may be settled by dividing it so that there may not be future dispute. Thereafter, it is clearly mentioned that the plaintiff shall have right to obtain a registered sale deed in favour of plaintiff and in case, the defendant will fail to execute the sale deed then the plaintiff will have right to get the sale deed registered through court of law. Therefore, it is clear from the plain reading of the document itself that in the document there are some admission of defendant on the basis of which plaintiff wants to establish his right in the house and the document is conveying that the title should be passed on to the plaintiff on registration of a document in favour of plaintiff else the plaintiff will have right to get relief through law process. In subsequent paras of the document it is mentioned that how the property will be used by the parties for the purpose of living. Therefore, if the plaintiff wants to produce this document to prove the admission of the defendant with respect to the certain investment made by the plaintiff in the house in question so as to create plaintiff's right to the extent of equal share in the house and to prove that

defendant agreed to pass on title of the half of the house of the property by executing a separate deed, then admittedly by this deed itself, the title has not been created otherwise there was no reason to write that there will be a separate registered sale deed in favour of the plaintiff to be executed by the defendant and if such deed is not executed by the defendant, the plaintiff will have right to get it by process of law. In view of the above reasons, the trial court committed error of law in holding that the document requires registration.

In the facts of the case and in the light of judgment relied upon by learned counsel for the respondents himself, particularly, the judgment of the Hon'ble Apex court delivered in the case of Bhimlendu Kumar Chatterjee (supra), the trial court failed to read the contents of the document and failed to appreciate the effect of the language used in the document, which itself says that there will be a deed in writing subsequent to this document and that will be got registered.

At this stage, it will be just and proper to mention here that according to respondent, the plaintiff himself filed suit in the year 1985 and he withdrawn the same. The respondent also filed the suit which appears to be in the year 1983 and in that suit, this very document was produced and the trial

court held that the document in question to be not admissible in evidence and the issue was raised about its admissibility of the document. In non-petitioners suit, decree was passed on 26th March, 2007. Learned counsel for the respondent submitted that petitioner has challenged the decree dated 26th March, 2007 and appeal is pending. However, it appears that no final finding has been recorded so as to make the document inadmissible in evidence. Hence, the fact is irrelevant and has no bearing because the issue is under challenge in the appeal.

In view of the above, the writ petition of the petitioners is allowed, the order of the trial court dated 31.7.2007 is quashed and set aside.

(PRAKASH TATIA), J.

c.p.goyal/-